

**MASSACHUSETTS BOARD OF EXAMINERS OF SHEET METAL WORKERS
POLICY REGARDING REVIEW OF CONVICTION AND PENDING CRIMINAL
CASE DATA REGARDING APPLICANTS FOR LICENSURE**

Enacted February 26, 2010

The following guidelines are followed by the Board of Examiners of Sheet Metal Workers for the purpose of determining eligibility to sit for any license examination where an applicant has a record of criminal convictions or pending criminal cases.

Policy No. 10-01

Purpose: To provide guidance to applicants and to Board staff members regarding the type, age and disposition of conviction and pending criminal case information that may impact eligibility for licensure.

Policy: The Executive Director, Associate Executive Director, and Board Counsel ("Board staff") are authorized to review the records of criminal convictions and pending criminal cases received from the Criminal History Systems Board to determine whether that applicant is eligible for a license per this policy. This policy is not intended to be comprehensive or cover extenuating circumstances, therefore, the Board Staff, in all cases, are free to decide that an individual's record must be subject to Board review and possible rejection even if they would otherwise qualify per this policy. The following guidelines shall determine if an individual qualifies for licensure based on their criminal information.

INFORMATIONAL NOTE: To assist applicants in understanding when a crime may lead to a license denial, the Board has created this policy, which explains when a conviction rises to the level where it could lead to a license denial. Pursuant to Chapter 69 of the Acts of 2018 (An Act Relative to Criminal Justice Reform), the Board is required to provide "a list of the specific criminal convictions that are directly related to the duties and responsibilities for the licensed occupation that would disqualify an applicant from eligibility for a license." The Board has determined that no single conviction, on its own, would result in rendering an applicant disqualified from being eligible for a license. However, other factors, such as a conviction being very recent, the applicant having a history of other criminal convictions, or the conviction involving aggravating factors (such as a crime being caused by substance abuse issues, the crime being part of a pattern of violence, the matter leading to a level 3 Sex Offender designation, etc.) might justify denying a license to an otherwise eligible candidate. As a result any conviction could lead to a license denial. This includes ALL the crimes listed on the Master Crime List issued by the Massachusetts Sentencing Commission and found at this link:

<https://www.mass.gov/files/documents/2016/08/my/mastercrimelist.pdf>

A. MAJOR CONVICTIONS – AUTOMATIC DISQUALIFICATION

Several major crimes exist which, by their very nature, may indicate that the applicant, if provided a license, would pose an unacceptable risk to the public health, safety

or welfare or to the provision of safe and competent practice in the sheet metal profession. As such, the Board has determined that these crimes are representative of a lack of good moral character and are reasonably related to the sheet metal profession. All applicants disqualified for a license per this finding shall be granted the right to an adjudicatory hearing to challenge this determination and the factual and/or legal basis for their disqualification. The following list of crimes (including attempt or conspiracy to commit), represents convictions which, if on an applicant's CORI will disqualify an applicant for **FIVE (5) years** from the date of conviction. In the event more than five years has passed since the conviction or the CORI indicates these charges are still pending, the applicant's record must be reviewed by the Board. All applicants denied under this section will also need to appear by the Board after the five year period expires when reapplying.

CONVICTION	DEFINITION
Murder	First degree murder is the killing of a human being committed with deliberately premeditated malice aforethought (intentionally), or with extreme cruelty. All other murder, arising from reckless or negligent conduct, is second degree murder.
Rape	Sexual intercourse by a person with another person who is compelled to submit against their will by force or threat of bodily injury or sexual intercourse with a child under sixteen years of age.
Aggravated sexual assault	The unwanted touching of the genitals, mouth or anus of one person by the genitals of another person as the result of violence, force or the threat of force.
Assault with intent to rape	The use of force or the threat of force with intent to commit rape.
Armed assault with intent to murder with felony intent	Assaulting another with intent to commit murder or maim or disfigure that person.
Armed assault with intent to rob	While being armed with a dangerous weapon assaulting another and robbing, stealing or taking money or personal property from that person.
Burglary, armed assault on occupant	Breaking and entering a dwelling in the nighttime, to commit a felony, armed with a dangerous weapon at the time of such breaking, with any other person being lawfully therein.

Kidnapping	Without lawful authority, forcibly or secretly confining or imprisoning another person within this commonwealth against his will or forcibly carrying a person from the commonwealth against their will or secretly confining or imprisoning a person.
Breaking and entering, day/night, intent to commit felony, fear	Entering or breaking and entering, in the day time, a building, ship, vessel or vehicle with intent to commit a felony and placing any person lawfully therein in fear.
Burning a building	Willfully and maliciously setting fire to, burning or causing to be burned a building other than a dwelling.
Burning dwelling house (attempt)	Willfully and maliciously setting fire to, burning or causing to be burned a dwelling house or a building adjacent to a dwelling house.
CONVICTION	DEFINITION
Indecent assault and battery, child under 14	Any unwanted touching of the breast or genitals either directly or indirectly, enhanced penalty if the victim is fourteen years of age.
Indecent assault and battery, child 14 or over	Any unwanted touching of the breast or genitals either directly or indirectly, enhanced penalty if the victim is fourteen years of age.
Unnatural acts with child under 16	Committing any unnatural and lascivious act with another person, enhanced penalty if the other person is under sixteen years of age.
Assault and battery dangerous intimidation, race, color, religion	Committing an assault or a battery upon a person or damaging the real or personal property of a person with the intent to intimidate such person because of such person's race, color, or religion; an enhanced penalty is imposed if serious bodily injury occurs.
Administering drugs to obtain sex	Administering to or Causing to be taken by a person any drug, matter or thing with intent to stupefy or overpower such person so as to thereby enable any person to have unlawful sexual intercourse.
Induce sex, minor	Inducing any person under eighteen of chaste life to have unlawful sexual intercourse.

B. MATTERS REQUIRING BOARD REVIEW

In the following instances, the Board shall review the applicant's criminal record at a Board meeting:

1. Any conviction for which there was a prison sentence of **TWO YEARS** or more (marked by the code "CMTD" and the relevant time period).
2. Minor convictions whose conviction occurred within the past **FIVE YEARS**, these include:
 - A. Burglary/breaking and entering
 - B. Arson/burning a building
 - C. Possession of drugs (other than marijuana)
 - D. Intent to distribute drugs
 - E. Assault and Battery (including on a police officer)
 - F. OUI charged as a second offense or greater.
3. Any recent matter for which the CORI indicates an open status, showing that there has not yet been a disposition, or has a period of probation continuing at least **six** months after the review date. This does not include open traffic violations, such as a compulsory insurance violation, attaching wrong plates, or a first time OUI.

C. MATTERS WHICH MAY BE APPROVED BY BOARD STAFF

1. Traffic violations, such as compulsory insurance violations, attaching wrong plates, or a first time OUI which have an outstanding probationary period.
2. Minor convictions whose convictions occurred more than **five** years in the past.
3. CORI reports which show a maximum of two minor convictions that remain open but have been open for more than five years.
4. More serious convictions, other than major convictions referred to in Section A, which involved less than two years of prison commitment and occurred more than **ten** years in the past.

D. MATTERS WHICH MAY BE DENIED/PUT ON HOLD BY BOARD STAFF

1. For matters in which the applicant has made a false statement on his/her application for licensure regarding a criminal history, the application may be denied by a Board staff for **SIX MONTHS**. Individuals so denied may have a limited hearing to contest the accuracy of this determination as allowed by law. This denial period shall not apply to individuals who would otherwise be approved under section C(1), C(2), or C(3) of this policy unless otherwise decided by the Board.
2. Applicants whose CORI lists a crime in which the status code is "W" to indicate there is an outstanding warrant shall have their application placed on **HOLD**. The applicant shall be given six months to send in documentation that the warrant is withdrawn, otherwise the application will be denied for failure to cooperate with a Board request.

E. BOARD MEETING REVIEW PROTOCOLS

The following procedures must be adhered to by each Board when reviewing CORI materials at a meeting:

1. All CORI reviews must occur in executive session, with applicant notification occurring as required by law.
2. The following factors will be applied by the Board when analyzing an applicant's CORI at its meeting in order to determine whether to approve or deny a license application:
 - (a) The requirements of public protection
 - (b) Relationship between sheet metal work and public protection;
 - (c) Time since the conviction;
 - (d) Age of the applicant/licensee at the time of the offense(s);
 - (e) Seriousness and specific circumstances of the offense(s);
 - (f) The number of offenses;
 - (g) Whether the applicant/licensee has pending charges;
 - (h) Any relevant evidence of rehabilitation or lack thereof;
 - (i) Submission of false information on an application for licensure and/or failure to provide required notification of new information;
 - (j) Any other relevant information, including information submitted by the applicant/licensee or requested by the given licensing Board.\
3. Applicants indicating that a CORI is inaccurate regarding a relevant conviction may be allowed to place their application on hold for up to six months while correcting the CORI.

F. DUE PROCESS REQUIREMENTS

Pursuant to relevant case law and the provisions of G.L. c. 30A, the Board must provide applicants who are denied a license the right to challenge the Board's decision. This includes the right to challenge the accuracy of the CORI report used to justify a denial. The following is a minimum of the procedures which must be followed:

1. All denials must be issued in writing as soon as possible after the decision to deny a license is made.

2. Denial letters must state the factual and legal reasons justifying the denial.
3. Unless the denial is to be permanent, denial letters should specify when the applicant may file a new application for licensure.
4. The denial must outline the applicants right to request a limited hearing on the board's rationale for the denial. This must include requiring the applicant to file, in writing, a request for a hearing within fourteen (14) days of the date of the denial letter (or any amendment thereof) and must notify the applicant that this request must specifically refute the facts upon which the Board has based its decision. If the applicant does this, they are entitled to a hearing, if they do not, they should be provided with a notice that their request is denied and notify them of their appellate rights.